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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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DOCKET NO. E-01750A-98-0467

DOCKET NO. E-01750A-97-0701

DOCKET NO. E-01461A-98-0466

DOCKET NO. E-01461A-97-0696

DOCKET NO. E-01749A-98-0468

DOCKET NO. E-01703A-98-0469

DOCKET NO. E-01575A-98-0472

DOCKET NO. E-01575A-97-0706

PROCEDURAL ORDER

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF COMPETITION IN THE  
PROVISION OF ELECTRIC SERVICES  
THROUGHOUT THE STATE OF ARIZONA.

IN THE MATTER OF THE STRANDED COST  
FILING AND REQUEST FOR A WAIVER OF  
CERTAIN PORTIONS OF THE RULES FILED BY  
MOHAVE ELECTRIC COOPERATIVE, INC.

IN THE MATTER OF THE FILING BY MOHAVE  
ELECTRIC COOPERATIVE, INC. OF  
UNBUNDLED AND STANDARD OFFER  
SERVICE TARIFFS PURSUANT TO A.A.C. R14-  
2-1606.

IN THE MATTER OF THE STRANDED COST  
FILING AND REQUEST FOR A WAIVER OF  
CERTAIN PORTIONS OF THE RULES FILED BY  
TRICO ELECTRIC COOPERATIVE, INC.

IN THE MATTER OF THE FILING BY TRICO  
ELECTRIC COOPERATIVE, INC. OF  
UNBUNDLED AND STANDARD OFFER  
SERVICE TARIFFS PURSUANT TO A.A.C. R14-  
2-1606.

IN THE MATTER OF THE STRANDED COST  
FILING AND REQUEST FOR A WAIVER OF  
CERTAIN PORTIONS OF THE RULES FILED BY  
GRAHAM COUNTY ELECTRIC COOPERATIVE,  
INC.

IN THE MATTER OF THE STRANDED COST  
FILING AND REQUEST FOR A WAIVER OF  
CERTAIN PORTIONS OF THE RULES FILED BY  
DUNCAN VALLEY ELECTRIC COOPERATIVE,  
INC.

IN THE MATTER OF THE STRANDED COST  
FILING AND REQUEST FOR A WAIVER OF  
CERTAIN PORTIONS OF THE RULES FILED BY  
SULPHUR SPRINGS VALLEY ELECTRIC  
COOPERATIVE, INC.

IN THE MATTER OF THE FILING BY SULPHUR  
SPRINGS VALLEY ELECTRIC COOPERATIVE,  
INC. OF UNBUNDLED AND STANDARD OFFER  
SERVICE TARIFFS PURSUANT TO A.A.C. R14-  
2-1606.

**BY THE COMMISSION:**

On December 22, 2003, Phelps Dodge Mining Company, Successor in interest to Cyprus Climax Metals Company ("Phelps Dodge"), ASARCO Incorporated, and Arizonans for Electric Choice and Competition ("AECC") (collectively "AECC et al") filed an Application for the Scheduling of a Hearing to Determine the Stranded Cost. AECC et al requests that the Arizona Corporation Commission ("Commission") schedule a hearing for the purpose of determining the Stranded Cost, if any, to be collected by Trico Electric Cooperative, Inc. ("Trico"), Duncan Valley Electric Cooperative, Inc. ("Duncan"), Graham County Electric Cooperative, Inc. ("GCEC"), Sulphur Springs Valley Electric Cooperative ("SSVEC"), and Mohave Electric Cooperative, Inc. ("Mohave") (collectively "Distribution Cooperatives") and to open such Distribution Cooperatives' service territories to competition. AECC asserts that because the Commission has not yet conducted hearings on the Distribution Cooperatives' applications for Stranded Cost recovery, the customers of the Distribution Cooperatives are not eligible for competition electric services pursuant to A.C.C. R14-2-1602A.

On January 9, 2004, Duncan and GCEC filed a Response to AECC et al's Application. After describing events that occurred subsequent to the Commission adopting the Retail Electric Competition Rules ("Rules"), Duncan and Graham argue that there is no reason to commit the resources of the parties or the Commission to a proceeding based on a set of rules' assumptions which are in the process of being changed. They further argue there is no reason to force the Distribution Cooperatives to incur substantial costs complying with a set of rules which are being actively re-evaluated. Duncan/GCEC argues that the Application makes no sense in light of the fact that there is no retail competition, and there is no justifiable reason to require the Distribution Cooperatives to incur substantial expenses only to "stand and wait".

On January 12, 2004, Trico filed a Response and joined with Duncan and GCEC in opposing AECC's request for the reasons stated in the Duncan/GCEC Response. Trico noted too that the Distribution Cooperatives appealed Decision No. 59943 (December 26, 1996) which adopted the Rules. The Distribution Cooperatives are challenging the constitutionality of the entire stranded cost

1 process. Trico argues that to grant the AECC et al Application may constitute an invasion of the  
2 appellate courts' jurisdiction and impair the judicial appellate process. In addition, Trico argues, it  
3 would be unfair to require the Distribution Cooperatives to comply with the provisions of the Rules  
4 should the appellate courts ultimately find key aspects of the Rules to be wholly or partially unlawful.

5 On January 12, 2004, SSVEC filed its Response to AECC's Application and states that for the  
6 reasons set forth in the Duncan/GCEE and Trico Responses, the Application should be denied until  
7 various other issues concerning the Rules have been resolved.

8 On January 20, 2004, AECC et al filed a Reply to the Responses of Duncan, GCEEC, SSVEC  
9 and Trico. AECC argues that Commission public policy supports development of retail competition.  
10 AECC states that the lack of robust retail competition in the territories of TEP, APS and SRP are due  
11 to inadequate shopping credits and that as the Competition Transition Charge ends and as new  
12 generation sources are available, direct access will become a viable alternative. AECC asserts that  
13 the cost to implement retail competition is not at issue in these proceedings as the Commission has  
14 already made a public determination that retail competition can provide benefits to Arizona's  
15 ratepayers. Furthermore, AECC et al argues that for the Commission to delay opening the  
16 Distribution Cooperatives' territories pending resolution of the appeals is contrary to the provision of  
17 A.R.S. §40-254(F) which provides that Commission rules and orders remain in effect pending the  
18 decision of the courts. AECC et al states that in activating the Distribution Cooperatives' Stranded  
19 Cost dockets the Commission can coordinate the proceeding with the upcoming rulemaking docket so  
20 that implementation of direct access can coincide with changes to retail competition, if any.

21 On January 22, 2004, Commission Utilities Division Staff ("Staff") filed a Response to  
22 AECC's Application. Staff opposed AECC et al's request, although not for all the reasons advanced  
23 by the Distribution Cooperatives. Staff states that in Decision No. 65154, also known as the "Track  
24 A" Decision, the Commission instructed Staff to re-examine the existing electric competition rules.  
25 Staff states it has begun that process and has solicited and received comments from interested parties  
26 and held an initial workshop in December 2003 to discuss possible Rule revisions. Staff believes that  
27 it is unwise to begin proceedings to open the Distribution Cooperatives' territories to competition  
28 while at the same time reconsidering various aspects of the existing rules. Staff asserts the

1 proceedings that AECC et al seeks to initiate may interfere with ongoing efforts to re-examine the  
2 Rules by taking time away from these efforts and redirecting it to other proceedings. Staff is  
3 concerned that the Commission could expend valuable time and resources to process the stranded  
4 cost cases under existing Rules only to have those results made irrelevant by subsequent Rule  
5 amendments.

6 On January 30, 2004, AECC filed a Reply to Staff's Response. AECC et al argues that  
7 transactions in the Distribution Cooperatives' service territories should not be held hostage to  
8 conjecture and supposition or regulatory lag regarding possible changes to the rules.

9 On February 9, 2004, Duncan and GCEC filed a Supplemental Response, requesting the  
10 Administrative Law Judge take official notice of the January 27, 2004 Decision of the Arizona Court  
11 of Appeals in Phelps Dodge Corp. et al v. Arizona Electric Power Cooperative, Inc., 1 CA-CV 01-  
12 0068. Duncan and GCEC assert that the Court of Appeals invalidated certain Rules on constitutional,  
13 statutory or Administrative Procedure Act grounds, affirmed certain others and vacated all  
14 Commission decisions previously issued which granted Certificates of Convenience and Necessity to  
15 ESPs. They note that although a Petition for Review may be filed with the Arizona Supreme Court,  
16 the further uncertainty concerning the Rules and other aspects of electric competition created by the  
17 Decision reinforces the arguments that the Application should be denied.

18 On February 6, 2004, Staff also requested the Hearing Division to take official notice of the  
19 Court of Appeals Decision. At that time, Staff stated it was too early to know if review of the  
20 Decision would be sought or how the Decision may impact these proceedings. Staff requested that  
21 these dockets continue to be stayed.

22 On February 17, 2004, AECC et al filed a Response to Staff's Request for Official Notice.  
23 AECC did not oppose taking official notice, but objected to Staff's request to continue the stays on  
24 these proceedings. In light of the Court's discussion of A.A.C. R14-2-1602, whether the decision is  
25 appealed further is not sufficient argument to support continuing the stay of these proceedings.

26 At this juncture, sufficient time has elapsed since the Court of Appeals Decision and the  
27 Commission started its re-evaluation of the Rules under the "Track A" Decision that the parties  
28 should have a better ability to assess the status of the Rules and how they impact this Application.

1 Consequently, a procedural conference to discuss the effect of the Court's Decision and anticipated  
2 rule changes is in order.

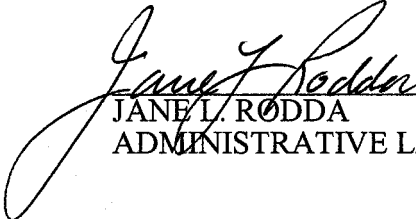
3 On January 28, 2004, Constellation NewEnergy, Inc. ("Constellation"), a competitive retail  
4 electric service provider serving commercial and industrial customers, and Strategic Energy, LLC  
5 ("Strategic"), an energy management company that provides electric load aggregation and power  
6 supply coordination services, filed for Leave to Intervene in the these matters. No party opposed  
7 their intervention. Thus, their intervention should be granted.

8 IT IS THEREFORE ORDERED that a procedural conference for the purpose of oral  
9 argument on the Application, and to update the Commission on the status of the Retail Competition  
10 Rules shall commence on June 2, 2004, at 1:30 p.m., or as soon thereafter as is practicable, at the  
11 Commission's Phoenix offices, 1200 West Washington, Phoenix, Arizona.

12 IT IS FURTHER ORDERED that the request to intervene of Constellation and Strategic is  
13 granted.

14 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
15 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

16 DATED this 4<sup>th</sup> day of May, 2004.

  
JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

17  
18  
19  
20 Copies of the foregoing mailed  
this 4 day of May, 2004 to:

21 C. Webb Crocket  
22 Fennemore Craig  
23 3003 N. Central Avenue, Suite 2600  
Phoenix, Arizona 85012-2913  
Attorneys for Phelps Dodge and AECC

24 Michael M. Grant  
25 Todd C. Wiley  
26 2575 East Camelback Road  
Phoenix, Arizona 85016-9224  
Attorneys for Duncan and GCEC

Russell E. Jones  
Waterfall Economidis Caldwell hanshaw  
& Villamana  
5210 East Williams circle  
Suite 800  
Tucson, Arizona 85711-7497  
Attorneys for Trico

Christopher Hitchcock  
Law Offices of Christopher Hitchcock PLC  
Post Office Box 87  
Bisbee, Arizona 85603-0087  
Attorneys for SSVEC

1 Michael Curtis  
2 Martinez & Curtis  
2712 North 7<sup>th</sup> Street  
3 Phoenix, Arizona 85006-1003  
Attorneys for Mohave Electric Cooperative

4 Jeffrey B. Guldner  
Snell & Wilmer  
One Arizona Center  
5 400 East Van Buren  
Phoenix, Arizona 85004-2202  
6 Attorneys for APS

7 Douglas C. Nelson  
Douglas C. Nelson PC  
8 7000 North 16<sup>th</sup> Street  
Phoenix, Arizona 85020-5547  
9 Attorneys for Commonwealth  
ACAA  
10 2627 North 3<sup>rd</sup> Street  
Suite Two  
11 Phoenix, Arizona 85004

12 Jack Shilling  
Duncan Valley Electric Cooperative  
13 P.O. Box 440  
222 N. Highway 75  
14 Duncan, Arizona 85534

15 Steven Lines  
Graham County Electric Cooperative  
16 P.O. Drawer B  
9 W. Center  
17 Pima, Arizona 85543

18 Patricia Cooper  
Arizona Electric Power Cooperative, Inc.  
19 Post Office Box 670  
1000 South Highway 80  
20 Benson, Arizona 85602

21 Brown & Bain PA  
2901 North Central Avenue  
22 Phoenix, Arizona 85001-0400  
Attorneys for Illinova  
23  
24  
25  
26  
27  
28

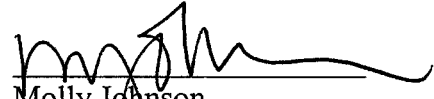
Marvin S. Cohen  
Charlene Gibson Robertson  
Sacks Tierney, PA  
4250 North Drinkwater Boulevard, 4th Floor  
Scottsdale, Arizona 85251-3647  
Attorneys for Constellation and Strategic

Mr. Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.  
2627 N. Third Street, Suite Three  
Phoenix, Arizona 85004-1104

By:

  
Molly Johnson  
Secretary to Jane L. Rodda